

**Revision Date:** March 2011

**Chapter:** Compensation Review  
**Section:** General Information

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## COMPENSATION EARNABLE (G.C. SECTION 20636)

The ~~payrate~~ **pay rate** and special compensation of members is further defined below.

### PAY RATE

~~"Payrate"~~ **"Pay rate"** means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. ~~"Payrate,"~~ **"Pay rate,"** for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e) **of G.C. section 20636.**

### SPECIAL COMPENSATION

Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement to similarly situated members of a group or class of employment and is reported in addition to and separately from pay rate. Special compensation is ~~also~~ delineated specifically and exclusively in the regulations adopted in the **California Code of Regulations (CCR) Section 571 (a) and (b)**. Subsection 'b' specifies the standards that all special compensation items must meet. A complete reprint of CCR 571 (a) and 571(b) are on the following pages.

Only those items listed in the CCR 571 (a) and meeting **the** criteria listed in CCR 571 (b) are reportable. If the special compensation item is not included in the exclusive list, it is not reportable for retirement purposes.

- All special compensation is required to be reported separately **from pay rate** as special compensation, as it is earned.
- Do not report special compensation prospectively, it must be reported for the pay period in which it was earned.
- Special compensation shall be for services rendered during normal working hours, **and**, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

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**Management Incentive Pay** — Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in section 571.

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**Value of Employer-Paid Member Contributions (EPMC)** — The full monetary value of employer-paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all “compensation earnable” excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under G.C. section 20636(c)(4) thus eliminating a perpetual calculation.

- A. A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer’s governing body, and submitted to CalPERS for review and approval.
- B. The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment — except that the employer’s governing body may elect a “time-in-grade exception” that which shall only apply to persons newly hired into the pertinent group or class of employment.
- C. To be classified as “newly-hired”, a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.
- D. The time-in-grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer’s governing body for the purpose of paying and reporting the value of EPMC, pursuant to the California Code of Regulations (CCR) Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.
  - 1. The time-in-grade exception must be applied consistently to all newly-hired employees in the pertinent group or class.
  - 2. The time-in-grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirements requirement may be three years for paying fifty percent (50%) with increases of twenty-five percent (25%) for each additional year of time-in-grade.
  - 3. Once the initial time-in-grade requirement has been met by a newly-hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

- E. To implement the time-in-grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgment must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.
- F. The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation — along with any time-in-grade exception for newly-hired employees — must be incorporated into the written labor agreement that pertains to the ~~effective~~ **affected** group or class of employment.

The time-in-grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to CCR Section 571, is separate and apart from the time-in-grade exception from paying EPMC pursuant to CCR Section 569. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to pay rate during the period of final compensation, pursuant to Section 20692 of the Government Code.

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**Auditorium Preparation Premium** — Compensation to **school** employees who are routinely and consistently assigned to prepare auditorium(s), i.e. setting up stages, lighting, props and chairs for performing arts purposes.

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**Branch Assignment Premium** — Compensation to employees who are routinely and consistently assigned to a branch office or work site that is ~~defined~~ **identified** as “rural” or “remote” in the written labor agreement.

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**Fire Inspector Premium** — Compensation to ~~“fire inspection”~~ **“fire inspector”** personnel who are routinely and consistently assigned to inspect buildings and other permanent structures for compliance with governmental safety standards.

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**Holiday Pay** — Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to CalPERS.

For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned.

If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for CalPERS purposes. If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation.

If the cash out option is also utilized near his/her final compensation period, it may still be excluded based upon a review of the contracting agency or school employer's experience relating to: the number of employees in the group with this option; the number of employees who exercise this option; the frequency with which employees exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above CalPERS actuarial assumptions. This review will be conducted by CalPERS on a case-by-case basis.

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## 571 (b) — CALIFORNIA CODE OF REGULATIONS CRITERIA

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

1. Contained in a written labor policy or agreement;
2. Available to all members in the group or class;
3. Part of normally required duties;
4. Performed during normal hours of employment;
5. Paid periodically as earned;
6. Historically consistent with prior payments for the job classification;
7. Not paid exclusively in the final compensation period;
8. Not final settlement pay; and,
9. Not creating an unfunded liability over and above CalPERS actuarial assumptions.

**NOTE:**

Special Compensation items must meet definitions listed in CCR 571(a) as well as the criteria outlined in CCR 571(b) to be reported to CalPERS.

(c) Only items listed in CCR 571 (a) have been affirmatively determined to be special compensation. All items of special compensation reported to CalPERS will be subject to review for continued conformity with all of the standards listed in CCR 571 (b).

(d) If an item of special compensation reported for a member is not listed in CCR 571 (a) or is out of compliance with any of the standards in CCR 571 (b) as reported for an individual, then it shall not be used to calculate the final compensation for that individual.

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State and federal statutes provide various provisions for paying and reporting member contributions. Below are ~~four~~ **five** provisions, a brief description of each and requirements to implement any of the ~~four~~ **five**. Samples of all ~~four~~ **five** resolutions are located later in this section.

## PAYMENT OF MEMBER CONTRIBUTIONS

A contracting public agency or school employer may pay all or a portion of the normal contributions required to be paid by members of a group or class. This is called Employer Paid Member Contributions (EPMC). If an individual is not part of a group or class, the agency must pay EPMC for the closest related group **or class** in order to pay EPMC for the individual. Determinations for “group of one” and closest related group are made on a case-by-case basis by **the** Employer Services Division, **Compensation Review unit**. For this option a resolution is required (see Sample A). A copy should be sent to:

### CalPERS

Employer Services Division  
Compensation Review Unit  
P.O. Box 942709  
Sacramento, CA 94229-2709

An example of reporting contribution codes can be found in the payroll section.

## CALIFORNIA CODE OF REGULATIONS (CCR) SECTION 569

**Under payment of member contributions with time in-grade**, an employer may implement a cumulative “time-in-grade exception” for newly-hired employees upon the election by a contracting agency or school employer for the payment of normal member contributions (Employer Paid Member Contributions - EPMC) based on compensation within the pertinent group or class. To elect the “time-in-grade exception,” the employer’s governing body must adopt a resolution (see Sample B) or ordinance that specifies the “time-in-grade” schedule and group or class involved. The “time-in-grade exception” cannot take effect until after the resolution or ordinance has been reviewed and approved by CalPERS. To be classified as “newly hired”, a member of the group or class must not have been previously hired or retained by the employer in any capacity.

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## ~~SECTION 571~~ **PAYING AND REPORTING THE VALUE OF EPMC WITH TIME IN GRADE**

**Under the Section 571 regulation**, an employer may implement a cumulative “time-in-grade exception” for newly-hired employees for contracting agency or school employers to pay and report the value of EPMC as an item of “special compensation” within the pertinent group or class. To elect the “time-in-grade exception,” the employer’s governing body must adopt a resolution (**see** Sample D) that specifies the “time-in-grade” schedule and group or class involved. The “time-in-grade exception” cannot take effect until after the resolution has been reviewed and approved by CalPERS. To be classified as “newly hired”, a member of the group or class must not have been previously hired or retained by the employer in any capacity.

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## REPORTING THE VALUE OF EPMC

The example below demonstrates the method to report the value of EPMC on compensation earnable. The employee in this example has \$5,000.00 in regular earnings and a special compensation entry of \$50.00 for Uniform Allowance. The member contribution rate in this example is ~~.0700%~~ **7% (expressed .0700%)**. The last entry with a pay code 09 (special compensation), pay rate of \$353.50, earnings of \$353.50, and \$24.75 in contributions illustrates reporting the value of EPMC as a separate payroll entry:

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### CONVERTING EPMC TO PAYRATE IN THE FINAL COMPENSATION PERIOD (CONTRACT AMENDMENT METHOD)

~~Effective July 1, 1994,~~ The conversion of EPMC to payrate in an employee's final compensation period is the only **conversion** provision allowed in the Public Employees' Retirement Law (PERL). **To contract for this provision, an employer must have a resolution on file for EPMC.** This provision must be adopted and applied equally to everyone in a group or class of employment. If an individual is not part of a group or class, the agency must adopt this provision for the closest related group **or class** in order to convert EPMC to payrate for the individual. Determinations for "group of one" and closest related group are made on a case-by-case basis by the Employer Services Division, Compensation Review Unit.

G.C. section 20692, effective July 1, 1994, provides:

"(a) Where a contracting agency employer or a school employer has elected to pay all or a portion of the normal contributions of members of a group or class of employment pursuant to Section 20691, the employer may, pursuant to a labor policy or agreement, stop paying those contributions during the final compensation period applicable to the members and, instead, increase the pay rate of the members by an amount equal to the normal contributions paid by the employer on behalf of the employees in the pay period immediately prior to the final compensation period or increase the pay rate of the members by an amount established by a labor policy or agreement in existence and in effect on June 30, 1993. That amount shall not exceed the amount of the normal member contributions that are required to be paid by the members."

~~Also,~~ Please refer to the California Code of Regulations, Section 566.1. ~~This regulation can be found in the PERL or you may contact the Employer Contact Center at~~ **888 CalPERS** (or **888-225-7377**).

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Should an agency decide to stop paying members' contributions in the final compensation period and instead increase the pay rate by an equal amount, it would need to comply with the following:

1. Request a valuation from the Public Agency Contract Services Unit and follow their contract amendment procedures for this provision.
2. Include the provision in each written labor policy or agreement adopting this provision. The amount of EPMC converted to ~~payrate~~ **pay rate** must be the same amount (percent) of EPMC being paid by the employer unless there is a written labor agreement still in effect that was adopted prior to June 30, 1993 allowing the conversion of a smaller amount of EPMC than what is being paid.
3. Stop paying the member's contribution in the final compensation period and give a pay increase for all purposes. This is not just reporting the value of EPMC in the final compensation period.
4. **The conversion of EPMC must be on all compensation (i.e., pay rate and special compensation).**

After an agency amends its contract with CalPERS to provide this conversion, the new employer rate is effective the same day the amendment is effective. All employees in a group or class must be treated the same and there can be no "election" on the part of individual employees to convert EPMC to ~~payrate~~ **pay rate** in the final compensation period. The conversion would be allowed from the effective date of the contract amendment and cannot be reported prior to the contract amendment effective date.

If an employee only gives two weeks notice of retirement, the agency must retroactively adjust and report payroll for the conversion in the full final compensation period (for any final compensation period after the effective date of the contract amendment). If an employee cancels a retirement date, the agency can reverse the entries for the conversion but must commence the conversion again in the new final compensation period. An example of reporting contribution codes can be found later in this section.

**NOTE:**

Individual school districts cannot amend for this provision. All districts in a County Office of Education must amend for this provision by passing a resolution. After all districts have passed a resolution, the County Office of Education may amend its contract to convert EPMC to ~~payrate~~ **pay rate** in the final compensation period.

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## **RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS - IRC 414(h)(2)**

### **Sample E**

#### **EMPLOYER PICK-UP**

WHEREAS, the governing body of the **[NAME OF AGENCY]** has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the **[NAME OF AGENCY]** has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to **[ALL EMPLOYEES, OR ALL EMPLOYEES IN A RECOGNIZED GROUP OR CLASS OF EMPLOYMENT]** who are members of the California Public Employees' Retirement System;

NOW, THEREFORE, BE IT RESOLVED:

- I. That the **[NAME OF AGENCY]** will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of all its employees or all its employees in a recognized group or class of employment who are members of the California Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the **[NAME OF AGENCY]** to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the **[NAME OF AGENCY]** in lieu of contributions by the employees who are members of the California Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the **[NAME OF AGENCY]** to the California Public Employees' Retirement System.
- IV. That the **[NAME OF AGENCY]** shall pay to the California Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- V. That the amount of the contributions designated as employee contributions and paid by the **[NAME OF AGENCY]** to the California Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government Code Sections 20000, et seq.).



VI. That the contributions designated as employee contributions made by **[NAME OF AGENCY]** to the California Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

PASSED AND ADOPTED by the governing body of the **[NAME OF AGENCY]** this day of **[DATE]**, **[YEAR]**.

BY

(Signature of Official)

(Title of Official)

RETURN ADDRESS:

**FOR CALPERS USE ONLY**

**RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS - IRC 414(h)(2)**

Approved by: \_\_\_\_\_

Title: \_\_\_\_\_

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## RESOLUTION TO TAX DEFER SERVICE CREDIT PURCHASES

### Sample F

**Return to CalPERS - Unit 830**

**Employer code:** \_\_\_\_\_

#### **EMPLOYER PICKUP RESOLUTION PRE-TAX PAYROLL DEDUCTION PLAN FOR SERVICE CREDIT PURCHASES (CONTRIBUTION CODE 14)**

WHEREAS, the Board of Administration of the California Public Employees' Retirement System (CalPERS) at the April 1996 meeting approved a pre-tax payroll deduction plan for service credit purchases under Internal Revenue Code (IRC) section 414(h)(2); and

WHEREAS, the \_\_\_\_\_ Name of Employer \_\_\_\_\_ has the authority to implement the provisions of IRC section 414(h)(2) and has determined that even though implementation is not required by law, the tax benefit offered by this section should be provided to those employees who are members of CalPERS; and

WHEREAS, the \_\_\_\_\_ Name of Employer \_\_\_\_\_ elects to participate in the pre-tax payroll deduction plan for all employees in the following CalPERS Coverage Group(s):

Enter Membership Coverage Group(s) here:


**NOW, THEREFORE, BE IT RESOLVED:**

I. That the \_\_\_\_\_ Name of Employer \_\_\_\_\_ will implement the provisions of IRC Section 414(h)(2) by making employee contributions for service credit purchases pursuant to the California State Government Code on behalf of its employees who are members of CalPERS and who have made a binding irrevocable election to participate in the pre-tax payroll deduction plan. "Employee contributions" shall mean those contributions reported to CalPERS which are deducted from the salary of employees and are credited to individual employee accounts for service credit purchases, thereby resulting in tax deferral of employee contributions.

II. That the contributions made by the \_\_\_\_\_ Name of Employer \_\_\_\_\_ to CalPERS, although designated as employee contributions, are being paid by the \_\_\_\_\_ Name of Employer \_\_\_\_\_ in lieu of contributions by the employees who are members of CalPERS.

III. That the employees shall not have the option of choosing to receive the contributed amounts directly \_\_\_\_\_ instead of having them paid by the \_\_\_\_\_ Name of Employer \_\_\_\_\_ to CalPERS.

IV. That the \_\_\_\_\_ Name of Employer \_\_\_\_\_ shall pay to CalPERS the contributions designated as employee contributions from the same source of funds as used in paying salary, thereby resulting in tax deferral of employee contributions.

V. That the effective date for commencement of the pre-tax payroll deduction plan cannot be any earlier than the date the completed resolution is received and approved by CalPERS.

VI. That the governing body of the \_\_\_\_\_ Name of Employer \_\_\_\_\_ shall participate in and adhere to requirements and restrictions of the pre-tax payroll deduction plan by reporting pre-tax payroll deductions when authorized by CalPERS for those employees of the above stated Coverage Group(s) who have elected to participate in this plan.

**PASSED AND ADOPTED** by the governing body of the \_\_\_\_\_ Name of Employer \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_  
Day Month  
Year

BY \_\_\_\_\_  
(Signature of Official)

\_\_\_\_\_  
(Title of Official)

**RETURN ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**FOR CALPERS USE ONLY**

**Pre-tax payroll deduction plan effective date:**

\_\_\_\_\_

**Approved By:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**MEMBER SERVICES DIVISION, Service credit section-Unit 830**

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## COMPENSATION LIMITS (IRC SECTION 401(a)(17))

Section 401(a)(17) of the Internal Revenue Service Code provides dollar limitations on ~~benefits and contributions~~ **annual compensation that can be taken into account** under qualified retirement plans. ~~Below is a list of the procedures for reporting a member who has reached the limit.~~ CalPERS notifies all employers of the new limits each year in January by sending a Circular Letter. The employer should notify those employees who reach the compensation limit.

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If an employee's compensation reaches the limit, the employer should do the following:

- Send a notice to the following address indicating the member's name, Social Security Number and **service** period in which the employee's compensation first exceeded the limit:

**CalPERS**

Employer Services Division

Attn: Payroll Manager

P.O. Box 942709

Sacramento, CA 94229-2709

- Continue reporting Pay Code, Pay Rate, Member Earnings and a Contribution Code 01, but no member contributions for the periods that remain in the calendar year. Reporting the contribution code 01 allows the employee to continue earning service credit without making contributions on earnings that exceed the limit. If code 11 is used instead of 01, then the member will not receive service credit. While the law limits employee contributions, employer contributions should still be paid on all earnings that are reported. If an employee's pay rate increases after the time you cease reporting contributions, please indicate the higher pay rate and earnings on your payroll transaction in case legislation were to change the original limits established for the year.
- Once the calendar year is over, resume reporting contributions for the employee and begin the monitoring for the new calendar year.
- If an employee has already reached the limit and the above has not been done, please use a CalPERS Contribution Code 02 or 12 to make a prior period contribution adjustment and reverse contributions for each period that was reported to CalPERS on earnings that exceeded the limit. Federal law does not allow CalPERS to refund over-reported contributions to an active member of the system. The employer must report these adjustments and refund the money to the employees.

At this time, employer monitoring of their employees' compensation is the only method CalPERS has to determine if limits are exceeded. CalPERS plans to incorporate an automated means to monitor employee compensation and identify those that exceed the limit in the new contribution reporting system that is currently ~~in the beginning stages of~~ being developed.

